

## Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY SAN JOSE

INFO AMEMBASSY GUATEMALA

AMEMBASSY MANAGUA

AMEMBASSY PANAMA

AMEMBASSY SAN SALVADOR

AMEMBASSY TEGUCIGALPA

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E.O. 11652: N/A

TAGS: ECEM, CS

SUBJECT: PHARMACEUTICAL PATENT PROTECTION

REFERENCE: SAN JOSE 3096

1. THE SECTIONS OF THE PROPOSED PATENT LAW CONCERNING PHARMACEUTICALS DESCRIBED IN REFTEL DO NOT REFLECT CURRENT INTERNATIONAL PRACTICE. MOST COUNTRIES GRANT TERMS OF PROTECTION FROM 15 TO 20 YEARS. THE PROPOSED ANDEAN CODE CALLS FOR A MAXIMUM TERM OF 10 YEARS PROTECTION FOR PHARMACEUTICAL PROCESSES (BUT NOT PRODUCTS) FROM THE DATE OF GRANT (5 YEAR INITIAL PERIOD PLUS EXTENSION OF 5 YEARS).

PHARMACEUTICAL INDUSTRY CONTENTS THAT A FIFTEEN-YEAR TERM

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OF PROTECTION IS THE ABSOLUTE MINIMUM WHICH WOULD PERMIT

ADEQUATE TESTING, DEVELOPMENT AND COMMERCIALIZATION OF PHARMACEUTICAL PRODUCTS. ACCORDING TO INDUSTRY SOURCES IN THE US, THE TESTING OF PHARMACEUTICAL PRODUCTS REQUIRES AT LEAST 4 TO 5 YEARS, AND THIS IMPORTANT PHASE IN THE DEVELOPMENT OF A PHARMACEUTICAL PRODUCT IS ABSOLUTELY NECESSARY IN ORDER TO ASSURE THE QUALITY AND SAFETY OF THE PRODUCT.

2. PRESS REPORTS CONCERNING FRENCH LAW ARE ERRONEOUS. FRANCE OFFERS 20-YEAR PATENT PROTECTION FOR PRODUCTS AND PROCESSES WHICH A) HAVE NOT BEEN PREVIOUSLY PROPOSED AS

MEDICAMENTS AND B) HAVE A DEMONSTRATED THERAPEUTICAL USE. IN ITALY A BILL IS PENDING WHICH WOULD PROVIDE FOR THE PROTECTION OF PHARMACEUTICAL PRODUCTS. IN ADDITION, THE EUROPEAN COMMON MARKET PATENT CONVENTION, SCHEDULED FOR COMPLETION IN NOVEMBER 1975, PROPOSES THE PROTECTION OF PHARMACEUTICAL PRODUCTS. THUS, ALTHOUGH THERE HAS BEEN SOME WEAKENING OF PATENT PROTECTION (FOR EXAMPLE, THE ANDEAN COUNTRIES) MOST COUNTRIES DO OFFER SOME FORM OF PROTECTION FOR INDUSTRIAL PROPERTY IN THE PHARMACEUTICAL FIELD.

3. WE SERIOUSLY QUESTION THE WISDOM OF THE RESTRICTION IMPOSED BY ARTICLE 14(F) OF THE PROPOSED LAW. GIVEN THE CURRENT UNDERDEVELOPED STATE OF COSTA RICAN INDUSTRY, THIS MEASURE COULD WELL HAVE THE EFFECT OF RAISING THE PRICES OF MEDICINES IN COSTA RICA, RATHER THAN LOWERING THEM, SINCE IT COULD REQUIRE PHARMACEUTICAL COMPANIES TO SET UP UNECONOMIC UNITS FOR THE MANUFACTURE OF NECESSARY RAW MATERIALS AND BULK DRUGS.

4. WE UNDERSTAND THAT A GROUP OF LAWYERS AND PHARMACEUTICAL EXPERTS HAS ALREADY SUBMITTED TO THE PARLIAMENT OF COSTA RICA A COUNTERPROPOSAL WHICH WOULD CANCEL ARTICLE 14(F) AND REQUIRE THE EXTENSION OF THE TERM OF GRANT TO 15 YEARS WHILE OFFERING A COMPROMISE SOLUTION WHICH WOULD PERMIT THE CRG TO PURCHASE A PATENTED PRODUCT FROM ANY SOURCE IF THE LOCAL PATENT HOLDER COULD NOT MEET COMPETITION IN TERMS OF QUALITY AND PRICE.

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5. ACTION REQUESTED: WE SUGGEST THAT IN FUTURE DISCUSSIONS YOU POINT OUT UNUSUAL NATURE OF PROPOSED LAW IN LIGHT OF PRACTICE OF OTHER COUNTRIES, INCLUDING DEVELOPING COUNTRIES, AND ALSO STRESS POTENTIAL ECONOMIC CONSEQUENCES OF IMPLEMENTATION OF THE PROPOSALS. AMONG THESE ARE THE STRONG DISINCENTIVE TO FUTURE TRANSFERS OF TECHNOLOGY AND FORMULAS FOR LIFESAVING DRUGS AND THE OVERALL NEGATIVE EFFECT ON THE CLIMATE FOR FOREIGN INVESTMENT WHICH COULD

RESULT FROM PASSAGE OF THE BILL. EMBASSY MIGHT ALSO WISH  
TO CONTACT OTHER EMBASSIES (FRG, UK, FRANCE, SWITZERLAND,  
JAPAN) TO SEE WHAT THEY PLAN TO DO. KISSINGER

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